



Michael Marshall appeals the revocation of his probation. He alleges the court erred when it ordered him to serve the entirety of his suspended sentence. We affirm.

### **FACTS AND PROCEDURAL HISTORY**

The State charged Marshall with three counts of Class A misdemeanor invasion of privacy<sup>1</sup> and one count of Class D felony theft.<sup>2</sup> Marshall pled guilty to two counts of invasion of privacy in exchange for dismissal of the remaining charges. The court sentenced Marshall to two consecutive one-year sentences, with 18 months suspended to probation. One of the terms of Marshall's probation was a protective order requiring him to avoid April Sifuentes, who is the mother of Marshall's two children.<sup>3</sup>

During Marshall's probation, he began living with Sifuentes and their two children. Then he relapsed to using methamphetamine. Sifuentes took the children and went to stay with her sister. A few days later, Sifuentes returned to the family home to retrieve clothing, and Marshall was there. The two began to argue. When Sifuentes got in her car to leave, Marshall threw keys at her, called her a "bitch," and told her he would kill her. (Tr. at 8.) Sifuentes called Marshall's probation officer to report what happened. That same day, Marshall tested positive for methamphetamine.

The State filed a petition to revoke Marshall's probation based on his contact with Sifuentes and his use of an illegal drug. The trial court found both of those violations, revoked probation, and ordered Marshall to serve the 18 months that had been suspended.

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<sup>1</sup> Ind. Code § 35-46-1-15.1.

<sup>2</sup> Ind. Code § 35-43-4-2.

<sup>3</sup> The two counts of invasion of privacy to which Marshall pled guilty stemmed from his violation of a protective order granted to Sifuentes.

## DISCUSSION AND DECISION

Marshall argues the court should have ordered him to serve only a portion of the eighteen months that had been suspended. We cannot agree.

Probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled. The trial court determines the conditions of probation and may revoke probation if the conditions are violated. Once a trial court has exercised its grace by ordering probation rather than incarceration, the judge should have considerable leeway in deciding how to proceed. If this discretion were not afforded to trial courts and sentences were scrutinized too severely on appeal, trial judges might be less inclined to order probation to future defendants. Accordingly, a trial court's sentencing decisions for probation violations are reviewable using the abuse of discretion standard. An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances.

*Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007) (internal citations omitted).<sup>4</sup>

Marshall first claims “the facts and circumstances surrounding his violation of the protective order in this case demonstrate that he did not commit an egregious offense.” (Appellant’s Br. at 5.) We find his assertion unconvincing in light of his threat to kill Sifuentes. Sifuentes may have allowed Marshall to return to her home, but Marshall blatantly violated the court’s order that he stay away from Sifuentes. In fact, while Marshall was on probation, Sifuentes petitioned the court to remove the order of protection, and the court refused. Nevertheless, Marshall and Sifuentes signed a lease and moved in together. Marshall’s disrespect for the court’s authority was egregious.

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<sup>4</sup> Marshall’s argument headings state the revocation order is “Unreasonable,” (Appellant’s Br. at 7), based on “The Nature of the Probation Violation,” (*id.*), and his “Character.” (*Id.* at 8.) To the extent he is suggesting we should review his revocation using our authority under Ind. Appellate Rule 7(B) to revise sentences that are “inappropriate in light of the nature of the offense and the character of the offender,” we decline his invitation because that “is not the correct standard to apply when reviewing a sentence imposed for a probation violation.” *Prewitt*, 878 N.E.2d at 188.

Next Marshall claims the imposition of eighteen months of imprisonment is improper because he has a serious drug problem, he is remorseful for the effect of his drug use on his family, and he wants to receive treatment. At the revocation hearing, the court explained:

[Y]ou tested positive for methamphetamine, and you can disagree with this but my understanding of it is it takes up to one actual year for a person's brain to fully recover from the use of methamphetamine. And, uh, I definitely think your brain needs to be fully recovered so that you could benefit from mental health counseling, substance abuse counseling and all that kind of stuff.

(Tr. at 25.) In light of that explanation, we do not find the court abused its discretion in ordering Marshall to serve the remaining time in jail.

Affirmed.

VAIDIK, J., and MATHIAS, J., concur.